

REMARKS

Claims 1, 47-64, 70, 74-81, 74-81, 86-97, 99, 100, 103, 104 and 114-127 are currently active.

Claims 125-127 have been added. Antecedent support for the new claims is found on page 15, lines 20 and 21.

The Examiner has objected to the drawings. The drawings have been amended to obviate this rejection. Replacement sheets of the drawings are enclosed. Formal drawings will be provided when the application is allowed.

The Examiner has objected to the disclosure. The Numeral 230 now appears in the drawings.

The Examiner objects to Claims 94, 96 and 103 as being improperly dependent. It is respectfully submitted these claims are properly dependent.

The Examiner has rejected Claims 1, 47-64, 70-81, 86-97, 99, 100, 103, 104, 124 under 35 USC 112, second paragraph. As requested by the Examiner, the term "mechanism" has been changed to -- means -- .

The Examiner goes on and states that applicants must now specifically identify the associated elements in the specification to correspond with the means plus function language. Applicants respectfully traverse this request. The Examiner is requesting applicants to now commit to the defining and thus narrowing the scope of the means plus function language, essentially requiring applicants to go on the record and create an estoppel against themselves. In the future, in the event they need to protect the claims of the patents against potential infringers, 35 USC 112, paragraph 6 clearly states that the means plus function language is defined by the specification and equivalents thereto. Applicants, by choosing the means plus function language are seeking to obtain as broad interpretation of this language subject to the statute. It is inconsistent with what the law allows for the examiner to now require applicants to define the means plus function language so that the means plus function language becomes the explanation that applicants give for it. MPEP 2181 that the Examiner cites simply discusses 35 U.S.C. 112, paragraph 6. 37 C.F.R. 1.75(d) simply states there must be antecedent support for the claims. The specification provides antecedent support for the claims.

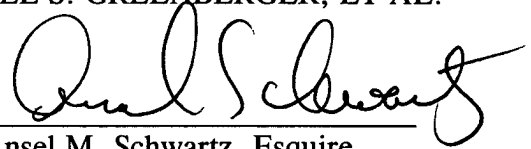
Applicants pointed out that the specification already discusses what the Examiner is requesting. For instance, on page 15, line 20, the specification states the incubating mechanism (now means) 200 preferably includes a housing 204 and a biochamber 10 in the housing 204. Further discussion in the specification elaborates upon this. Similarly, the claim hierarchy itself provides the Examiner with what the Examiner is already requesting. For instance, the means for automatically determining the state of said individual cell of the plurality of cells over time of the plurality of cells in Claim 1 can be found by going through the dependent claims to Claim 49 where the imaging means acquires two successive fluorescent images of each cell and compares them to each other serially to identify the state of each cell; or Claim 50 where the imaging means includes antibody type labels with different colors of dyes for use to detect the presence of cell surface markers. Applicants on page 22, starting on line 8 also discuss a preferable strategy for periodic monitoring and analysis of cells housed in the wells. The cells are observed using an inverted microscope 20 with a camera 32 that takes phase -- contrast images or fluorescence images using a camera 34. It is repeated, that these are simple recitations in the specification and the language of the means plus function in the broadest claim is not to be limited thereto. In fact, the law simply requires that the claim language in such an instance be defined only in enough detail so as to overcome the prior art, and not necessarily more so as to unfairly force the applicants to limit their claims beyond what they are entitled. It is respectfully submitted, that the independent claims,

and the corresponding limitations in of themselves distinguish over the prior art as they now read, as the Examiner has already determined.

In view of the foregoing amendments and remarks, it is respectfully requested that Claims 1, 47-64, 70, 74-81, 86-97, 99, 100, 103, 104 and 114-127, now in this application be allowed.

Respectfully submitted,

JOEL S. GREENBERGER, ET AL.

By 

Ansel M. Schwartz, Esquire
Reg. No. 30,587
One Sterling Plaza
201 N. Craig Street, Suite 304
Pittsburgh, PA 15213
(412) 621-9222

Attorney for Applicants

